

SENATE BILL 564

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R3

2000 Regular Session
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By: **Senators Ruben, Forehand, Lawlah, and Dorman**
Introduced and read first time: February 4, 2000
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Alcohol- and Drug-Related Offenses - Penalties - Treatment**

3 FOR the purpose of altering a certain definition of the term "imprisonment" for the
4 purpose of including certain commitments to the Department of Health and
5 Mental Hygiene or certain home detention for the purpose of violations of
6 certain vehicle laws; providing that, if a court suspends a sentence for certain
7 alcohol- or drug-related driving offenses, the court shall impose as a condition
8 participation in a certain alcohol or drug treatment or education program under
9 certain circumstances; providing that, if a court suspends a sentence for certain
10 alcohol- or drug-related driving offenses, the court may as a condition prohibit
11 operation of a motor vehicle unless the motor vehicle is equipped with a certain
12 ignition interlock system; providing that a certain requirement that a court
13 impose as a condition of a suspended sentence for certain controlled dangerous
14 substances offenses participation in a drug treatment or education program,
15 includes a commitment to the Department for certain alcohol or drug treatment;
16 providing that, if a court places a defendant on probation or probation before
17 judgment for certain alcohol- or drug-related driving offenses, the court shall
18 impose as a condition participation in a certain alcohol or drug treatment or
19 education program under certain circumstances; providing that, if a court places
20 a defendant on probation or probation before judgment for certain alcohol- or
21 drug-related driving offenses, the court may as a condition prohibit operation of
22 a motor vehicle unless the motor vehicle is equipped with a certain ignition
23 interlock system; providing that a certain requirement, that a court impose as a
24 condition of probation before judgment for certain controlled dangerous
25 substances offenses participation in a drug treatment or education program,
26 includes a commitment to the Department for certain alcohol or drug treatment;
27 prohibiting a court from placing a defendant on probation before judgment for
28 certain alcohol- or drug-related driving offenses if the defendant has been
29 convicted under, or been placed on probation before judgment, for certain
30 alcohol- or drug-related driving offenses within a certain period of time;
31 requiring a certain presentence investigation to include a report of a certain
32 alcohol or drug evaluation; requiring a certain evaluation report be submitted to
33 the Division of Parole and Probation under certain circumstances; expanding
34 the authority of a court to commit a defendant to the Department for alcohol or
35 drug dependency treatment under certain circumstances; expanding a

1 requirement of certain notification by the Department regarding certain
2 committed individuals to include notice to the Division of Parole and Probation,
3 victims, and the State Police under certain circumstances; and generally
4 relating to certain alcohol- and-drug related offenses.

5 BY repealing and reenacting, with amendments,
6 Article - Transportation
7 Section 27-101 (j)(1)
8 Annotated Code of Maryland
9 (1999 Replacement Volume and 1999 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article 27 - Crimes and Punishments
12 Section 639, 641, and 641A
13 Annotated Code of Maryland
14 (1996 Replacement Volume and 1999 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article - Correctional Services
17 Section 6-112
18 Annotated Code of Maryland
19 (1999 Volume)

20 BY repealing and reenacting, with amendments,
21 Article - Health - General
22 Section 8-505 and 8-507
23 Annotated Code of Maryland
24 (1994 Replacement Volume and 1999 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
26 MARYLAND, That the Laws of Maryland read as follows:

27 **Article - Transportation**

28 27-101.

29 (j) (1) In this [subsection] SECTION, "imprisonment" FOR A VIOLATION OF
30 § 21-902 OF THIS ARTICLE includes A SENTENCE OR CONDITION OF PROBATION THAT
31 PROVIDES FOR:

32 (I) [confinement] CONFINEMENT in an inpatient rehabilitation or
33 treatment center, INCLUDING AS PART OF A COMMITMENT UNDER § 8-505 OR § 8-507
34 OF THE HEALTH - GENERAL ARTICLE; OR

35 (II) HOME DETENTION WITH ELECTRONIC MONITORING UNDER
36 TITLE 20 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

Article 27 - Crimes and Punishments

1
2 639.

3 (a) (1) The courts may suspend sentence generally or for a definite time, and
4 may make such orders and impose such terms as to costs, recognizance for
5 appearance, or matters relating to the residence or conduct of the [convicts]
6 DEFENDANT as may be deemed proper; and if the [convict] DEFENDANT is a person
7 under 18 years of age, the courts may also make such orders as to [his] THE
8 DEFENDANT'S detention in any care or custody as may be deemed proper.

9 (2) In Charles County, St. Mary's County, and Calvert County, the court
10 may impose a sentence of confinement as a condition of probation.

11 (b) [However, when the conviction is for violation of § 21-902(a) or (b) of the
12 Transportation Article, if the court places the person on probation, it shall] IF A
13 COURT PLACES A DEFENDANT ON PROBATION FOR A VIOLATION OF § 21-902 OF THE
14 TRANSPORTATION ARTICLE OR § 388A OR § 388B OF THIS ARTICLE, THE COURT:

15 (1) SHALL require, as a condition of the suspension of sentence, that the
16 [person] DEFENDANT participate in an alcohol OR DRUG treatment or education
17 program approved by the Department of Health and Mental Hygiene INCLUDING A
18 COMMITMENT UNDER § 8-507 OF THE HEALTH - GENERAL ARTICLE, unless the court
19 finds and affirmatively states on the record that the interests of the [person]
20 DEFENDANT and the people of the State do not require the imposition of this
21 condition; AND

22 (2) MAY, AS A CONDITION OF THE SUSPENSION OF THE SENTENCE,
23 PROHIBIT THE DEFENDANT FROM OPERATING A MOTOR VEHICLE UNLESS THE
24 MOTOR VEHICLE IS EQUIPPED WITH AN IGNITION INTERLOCK SYSTEM UNDER §
25 27-107 OF THE TRANSPORTATION ARTICLE.

26 (c) In Prince George's County, the courts may also impose such sentences as
27 may be provided by law with respect to the offense upon which [an accused] THE
28 DEFENDANT has been convicted and cause the [convict] DEFENDANT to serve the
29 sentence by attendance at the county detention center or place of confinement under
30 the jurisdiction of the sheriff, where the sentence is to be performed during any
31 48-hour period, in any 7-day period, with each period of confinement to constitute
32 not less than 2 days of the sentence imposed; provided, however, that the offense
33 leading to such conviction shall permit confinement in the county detention center
34 and the total sentence imposed by the judge may not exceed 30 2-day periods of
35 confinement.

36 (d) When the conviction is for violation of any provision of §§ 276 through 303
37 of this article, if the court places the [person] DEFENDANT on probation, it shall
38 require, as a condition of the suspension of sentence, that the [person] DEFENDANT
39 participate in a drug treatment or education program approved by the Department of
40 Health and Mental Hygiene INCLUDING A COMMITMENT UNDER § 8-507 OF THE
41 HEALTH - GENERAL ARTICLE, unless the court finds and affirmatively states on the

1 record that the interests of the [person] DEFENDANT and the people of the State do
2 not require the imposition of this condition.

3 641.

4 (a) (1) (i) 1. Whenever a [person accused of a crime] DEFENDANT pleads
5 guilty or nolo contendere or is found guilty of an offense, a court exercising criminal
6 jurisdiction, if satisfied that the best interests of the [person] DEFENDANT and the
7 welfare of the people of the State would be served thereby, and with the written
8 consent of the [person] DEFENDANT after determination of guilt or acceptance of a
9 nolo contendere plea, may stay the entering of judgment, defer further proceedings,
10 and place the [person] DEFENDANT on probation subject to reasonable terms and
11 conditions as appropriate. The terms and conditions may include ordering the
12 [person] DEFENDANT to pay a fine or pecuniary penalty to the State, or to make
13 restitution, but before the court orders a fine, pecuniary penalty, or restitution the
14 [person] DEFENDANT is entitled to notice and a hearing to determine the amount of
15 the fine, pecuniary penalty, or restitution, what payment will be required, and how
16 payment will be made. The terms and conditions also may include any type of
17 rehabilitation program or clinic, or similar program, or the parks program or
18 voluntary hospital program.

19 2. In Allegany County, Calvert County, Charles County,
20 Garrett County, and St. Mary's County, the court may impose a sentence of
21 confinement as a condition of probation.

22 (ii) [However, when] IF the offense for which the judgment is being
23 stayed is for violation of any provision of § 21-902 of the Transportation Article OR §
24 388A OR § 388B OF THIS ARTICLE, the court:

25 1. Shall impose a period of probation and, as a condition of
26 the probation, require the [person] DEFENDANT to participate in an alcohol OR DRUG
27 treatment or education program approved by the Department of Health and Mental
28 Hygiene INCLUDING A COMMITMENT UNDER § 8-507 OF THE HEALTH - GENERAL
29 ARTICLE, unless the court finds and affirmatively states on the record that the
30 interests of the [person] DEFENDANT and the people of the State do not require the
31 imposition of this condition; and

32 2. May, as a condition of probation, prohibit the [person]
33 DEFENDANT from operating a motor vehicle unless the motor vehicle is equipped with
34 an ignition interlock system under § 27-107 of the Transportation Article.

35 (iii) When the offense for which the judgment is being stayed is for a
36 violation of any provision of §§ 276 through 303 of this article, the court shall require
37 the [person] DEFENDANT to participate in a drug treatment or education program
38 approved by the Department of Health and Mental Hygiene INCLUDING A
39 COMMITMENT UNDER § 8-507 OF THE HEALTH - GENERAL ARTICLE, unless the court
40 finds and affirmatively states on the record that the interests of the [person]
41 DEFENDANT and the people of the State do not require the imposition of this
42 condition.

1 (iv) Any fine or pecuniary penalty imposed as a term or condition of
2 probation shall be within the amount prescribed by law for a violation resulting in
3 conviction.

4 (2) Notwithstanding paragraph (1) of this subsection, a court may not
5 stay the entering of judgment and place a [person] DEFENDANT on probation for a
6 violation of any provision of § 21-902 of the Transportation Article OR § 388A OR § 388B
7 OF THIS ARTICLE if the [person] DEFENDANT has been convicted under, or has been
8 placed on probation under this section after being charged with a violation of, §
9 21-902 of the Transportation Article OR § 388A OR § 388B OF THIS ARTICLE within the
10 preceding 5 years.

11 (3) Notwithstanding paragraph (1) of this subsection, a court may not
12 stay the entering of judgment and place a [person] DEFENDANT on probation for a
13 second or subsequent controlled dangerous substance offense under §§ 276 through
14 303 of this article.

15 (4) Notwithstanding paragraph (1) of this subsection, a court may not
16 stay the entering of judgment and place a [person] DEFENDANT on probation for a
17 violation of any of the provisions of §§ 462 through 464B of this article for an offense
18 involving a person under the age of 16 years.

19 (5) (I) By consenting to and receiving a stay of entering of the
20 judgment as provided by this subsection, the [person] DEFENDANT waives the right
21 to appeal from the judgment of guilt by the court at any time.

22 (II) Prior to the [person] DEFENDANT consenting to the stay of
23 entering of the judgment, the court shall notify the [person] DEFENDANT that by
24 consenting to and receiving a stay of entry of judgment, the [person] DEFENDANT
25 waives the right to appeal from the judgment of guilt by the court at any time.

26 (b) Upon violation of a term or condition of probation, the court may enter
27 judgment and proceed with disposition of the [person] DEFENDANT as if the
28 [person] DEFENDANT had not been placed on probation.

29 (c) (1) Upon fulfillment of the terms and conditions of probation, the court
30 shall discharge the [person] DEFENDANT from probation.

31 (2) The discharge is final disposition of the matter.

32 (3) Discharge of a [person] DEFENDANT under this section shall be
33 without judgment of conviction and is not a conviction for purposes of any
34 disqualification or disability imposed by law because of conviction of crime.

35 641A.

36 (a) (1) Upon entering a judgment of conviction OR UPON RECEIPT OF A PLEA
37 OF NOLO CONTENDERE, the court having jurisdiction may suspend the imposition or
38 execution of sentence and place the defendant on probation upon such terms and
39 conditions as the court deems proper.

1 (2) In Charles County, St. Mary's County, Cecil County, Harford County,
2 and Calvert County, the court may impose as a condition of probation a sentence of
3 confinement.

4 (3) The court may impose a sentence for a specified period and provide
5 that a lesser period be served in confinement, suspend the remainder of the sentence
6 and grant probation for a period longer than the sentence but not in excess of 5 years.

7 (4) [However, if] IF the defendant consents in writing, the court may
8 grant probation in excess of 5 years, but only for purposes of making restitution.

9 (b) (1) Probation may be granted whether the offense is punishable by fine
10 or imprisonment or both.

11 (2) If the offense is punishable by both fine and imprisonment, the court
12 may impose a fine and place the defendant on probation as to the imprisonment.

13 (3) Probation may be limited to one or more counts or indictments, but,
14 in the absence of express limitation, shall extend to the entire sentence and judgment.

15 (4) The court may revoke or modify any condition of probation or may
16 reduce the period of probation.

17 (c) If a sentence of imprisonment is imposed, a portion of it is suspended, and
18 the defendant is placed on probation, the court may impose as a condition of probation
19 that the probation commence on the date the defendant is actually released from
20 imprisonment.

21 (d) When the probation granted is for violation of any provision of §§ 276
22 through 303 of this article, if the court places the [person] DEFENDANT on probation,
23 it shall require, as a condition of the suspension of sentence, that the [person]
24 DEFENDANT participate in a drug treatment or education program approved by the
25 Department of Health and Mental Hygiene, INCLUDING A COMMITMENT UNDER §
26 8-507 OF THE HEALTH GENERAL ARTICLE, unless the court finds and affirmatively
27 states on the record that the interests of the [person] DEFENDANT and the people of
28 the State do not require the imposition of this condition.

29 (E) IF THE COURT PLACES A DEFENDANT ON PROBATION FOR A CONVICTION
30 OR AFTER ACCEPTANCE OF A PLEA OF NOLO CONTENDERE FOR A VIOLATION OF §
31 21-902 OF THE TRANSPORTATION ARTICLE OR § 388A OR § 388B OF THIS ARTICLE, THE
32 COURT:

33 (1) SHALL REQUIRE, AS A CONDITION OF THE PROBATION, THAT THE
34 DEFENDANT PARTICIPATE IN AN ALCOHOL OR DRUG TREATMENT OR EDUCATION
35 PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE
36 INCLUDING A COMMITMENT UNDER § 8-507 OF THE HEALTH - GENERAL ARTICLE,
37 UNLESS THE COURT FINDS AND AFFIRMATIVELY STATES ON THE RECORD THAT THE
38 INTERESTS OF THE DEFENDANT AND THE PEOPLE OF THE STATE DO NOT REQUIRE
39 THE IMPOSITION OF THIS CONDITION; AND

1 (2) MAY, AS A CONDITION OF PROBATION, PROHIBIT THE DEFENDANT
2 FROM OPERATING A MOTOR VEHICLE UNLESS THE MOTOR VEHICLE IS EQUIPPED
3 WITH AN IGNITION INTERLOCK SYSTEM UNDER § 27-107 OF THE TRANSPORTATION
4 ARTICLE.

5

Article - Correctional Services

6 6-112.

7 (a) (1) On request of a court, a parole and probation agent of the Division
8 shall:

9 (i) provide the court with a presentence investigation report;

10 (ii) conduct other investigations; and

11 (iii) perform other probationary services.

12 (2) Except on court order, a presentence investigation report is
13 confidential and is not available for public inspection.

14 (3) On request, a presentence investigation report shall be made
15 available to:

16 (i) the defendant;

17 (ii) the defendant's attorney;

18 (iii) the State's Attorney;

19 (iv) a correctional facility;

20 (v) a parole, probation, or pretrial release official of this State, any
21 other state, or the United States;

22 (vi) a public or private mental health facility located in this State or
23 any other state if the individual who is the subject of the report has been committed,
24 or is being evaluated for commitment, to the facility for treatment as a condition of
25 probation; or

26 (vii) a community substance abuse treatment provider located in
27 this State or any other state if the individual who is the subject of the report will be
28 treated or evaluated for treatment by the provider as a condition of probation.

29 (b) (1) If a circuit court is satisfied that a presentence investigation report
30 would help the sentencing process, the court may order the Division to complete a
31 report before:

32 (i) sentencing a defendant who is convicted of a felony or of a
33 misdemeanor that resulted in serious physical injury or death to the victim to the
34 jurisdiction of the Division of Correction; or

1 (ii) referring a defendant to the Patuxent Institution.

2 (2) The party that requests the report has the burden of establishing
3 that the investigation should be ordered.

4 (3) If required under Article 27, § 781 of the Code, the report shall
5 include a victim impact statement.

6 (c) (1) The Division shall complete a presentence investigation report in
7 each case in which the death penalty or imprisonment for life without the possibility
8 of parole is requested under Article 27, § 412 of the Code.

9 (2) The report shall include a victim impact statement as provided under
10 Article 27, § 781 of the Code.

11 (3) The court or jury before which the separate sentencing proceeding is
12 conducted under Article 27, § 412 or § 413 of the Code shall consider the report.

13 (D) A PRESENTENCE INVESTIGATION SHALL INCLUDE A COMPLETE REPORT
14 OF ANY EVALUATION OF THE DEFENDANT ORDERED BY THE COURT UNDER § 8-505
15 OF THE HEALTH - GENERAL ARTICLE.

16 **Article - Health - General**

17 8-505.

18 (a) (1) Before or during a criminal trial or prior to sentencing, the court may
19 order the Department to evaluate a defendant to determine whether, by reason of
20 drug or alcohol abuse, the defendant is in need of and may benefit from treatment if:

21 (i) It appears to the court that the defendant has an alcohol or drug
22 abuse problem; or

23 (ii) The defendant alleges an alcohol or drug dependency.

24 (2) The court shall set and may change the conditions under which the
25 examination is to be conducted.

26 (b) Except in a capital case, on consideration of the nature of the charge, the
27 court:

28 (1) May require or permit an examination to be conducted on an
29 outpatient basis; and

30 (2) If an outpatient examination is authorized, shall set bail for the
31 defendant or authorize the release of the defendant on personal recognizance.

32 (c) (1) If a defendant is to be held in custody for examination under this
33 section:

1 (i) The defendant may be confined in a detention facility until the
2 Department is able to conduct the examination; or

3 (ii) The court may order confinement of the defendant in a medical
4 wing or other isolated and secure unit of a detention facility, if the court finds it
5 appropriate for the health or safety of the defendant.

6 (2) (i) If the court finds that, because of the apparent severity of the
7 alcohol or drug dependency or other medical or psychiatric complications, a defendant
8 in custody would be endangered by confinement in a jail, the court may order the
9 Department to either:

10 1. Place the defendant, pending examination, in a health
11 care facility that the Department designates as appropriate; or

12 2. Have local health department staff, or other qualified
13 personnel who the Department finds appropriate, immediately conduct an evaluation
14 of the defendant.

15 (ii) Unless the Department retains a defendant, the defendant shall
16 be promptly returned to the court after an examination.

17 (iii) A defendant who is detained for an examination under this
18 section may question at any time the legality of the detention by a petition for a writ
19 of habeas corpus.

20 (d) (1) If a court orders an evaluation under this section, the evaluator shall:

21 (i) Conduct an evaluation of the defendant; and

22 (ii) Submit a complete report of the evaluation within 7 days to the:

23 1. Court;

24 2. Administration; [and]

25 3. Defendant or the defendant's attorney; AND

26 4. DIVISION OF PAROLE AND PROBATION IF A PRESENTENCE
27 INVESTIGATION WAS ORDERED OR IF THE COURT ORDERED THE DEFENDANT TO BE
28 EVALUATED AS PART OF A SENTENCE, AS A CONDITION OF PROBATION, OR AS A
29 CONDITION OF PROBATION BEFORE JUDGMENT.

30 (2) On good cause shown, the court may extend the time for an
31 evaluation.

32 8-507.

33 (a) If a court finds in a criminal case that a defendant has an alcohol or drug
34 dependency, the court may commit the defendant as a condition of release, after
35 conviction, UPON A PLEA OF NOLO CONTENDERE, AS A CONDITION OF PROBATION, AS

1 A CONDITION OF PROBATION BEFORE JUDGMENT, or at any other time the defendant
2 voluntarily agrees to treatment to the Department for inpatient, residential, or
3 outpatient treatment.

4 (b) Before a court may commit a defendant to the Department for treatment,
5 the court shall:

6 (1) Offer the defendant the opportunity to receive treatment; and

7 (2) Obtain the written consent of the defendant:

8 (i) To receive treatment; and

9 (ii) For the reporting of information back to the court; and

10 (3) Consult with the Administration.

11 (c) The Department shall provide the services required by this section.

12 (d) The Department shall engage in reasonable efforts to facilitate the
13 admission of a defendant to the appropriate treatment facility.

14 (e) Unless the court allows the defendant to provide the defendant's own
15 transportation, on commitment or release of a defendant under this subtitle, the court
16 shall order transportation by law enforcement officials, detention center staff, or
17 sheriff's department staff within the local jurisdiction.

18 (f) (1) A defendant's withdrawal of consent to treatment shall be promptly
19 reported to the court.

20 (2) The defendant shall be returned to the court within 7 days for further
21 proceedings.

22 (g) A defendant who is committed for treatment under this section may
23 question at any time the legality of the commitment by a petition for a writ of habeas
24 corpus.

25 (h) (1) A commitment under this section shall be for at least 72 hours and
26 not more than 1 year.

27 (2) On good cause shown by the Administration, the court may extend
28 the time period for providing the necessary treatment services in increments of 6
29 months.

30 (3) Except during the first 72 hours after commitment, the Director or a
31 designee of the Director may terminate the commitment if the Director or the
32 designee determines that:

33 (i) Continued commitment is not in the best interest of the
34 individual; or

1 (ii) The individual is no longer amenable to treatment.

2 (i) When an individual is to be released from a commitment under this
3 section, the Director or the Director's designee shall:

4 (1) [consult] CONSULT with the court to determine if the individual is to
5 be returned to the court;

6 (2) IF THE INDIVIDUAL IS ON PROBATION OR PROBATION BEFORE
7 JUDGMENT, NOTIFY THE DIVISION OF PAROLE AND PROBATION; AND

8 (3) NOTIFY ANY VICTIM WHO FILED A NOTIFICATION REQUEST FORM AS
9 PROVIDED UNDER ARTICLE 27, § 770 OF THE CODE.

10 (j) In the event [an individual] A DEFENDANT committed under this section
11 leaves a treatment facility without authorization OR FAILS TO TIMELY REPORT IF
12 ALLOWED TO PROVIDE THE DEFENDANT'S OWN TRANSPORTATION, the
13 [responsibility of the Department is limited to the notification of the court that
14 committed the individual as soon as it is reasonably possible] DEPARTMENT SHALL
15 NOTIFY AS SOON AS REASONABLY POSSIBLE:

16 (1) THE COURT THAT COMMITTED THE DEFENDANT;

17 (2) THE DIVISION OF PAROLE AND PROBATION IF THE DEFENDANT IS
18 ON PROBATION, PROBATION BEFORE JUDGMENT, PAROLE, OR MANDATORY
19 SUPERVISION;

20 (3) ANY VICTIM WHO FILED A NOTIFICATION REQUEST FORM UNDER
21 ARTICLE 27, § 770 OF THE CODE; AND

22 (4) THE STATE POLICE REGARDING THE DEFENDANT'S STATUS IF
23 THERE IS PROBABLE CAUSE THAT THE DEFENDANT IS VIOLATING ARTICLE 27, § 137
24 OR § 137A OF THE CODE.

25 (k) Nothing in this section imposes any obligation on the Administration:

26 (1) To treat any defendant who knowingly and willfully declines to
27 consent to further treatment; or

28 (2) In reporting to the court under this section, to include an assessment
29 of a defendant's dangerousness to one's self, to another individual, or to the property
30 of another individual by virtue of a drug or alcohol problem.

31 (l) Any time served by a criminal defendant held for evaluation or committed
32 for treatment shall be credited against the sentence imposed by the court.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2000.